

TIME WARNER

EX PARTE OR LATE FILED

Carol A. Melton
Vice President-Law
and Public Policy

RECEIVED

JUL 25 1996

July 25, 1996

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re Docket No. 96-98

Dear Mr. Caton:

Please associate the attached document with the record in the above-referenced proceeding.

Sincerely,

Carol Melton

Carol A. Melton

enc.

No. of Copies rec'd 071
List ABCDE

Thomas J. Morrow
President



RECEIVED

JUL 25 1996

EX PARTE

July 25, 1996

Honorable Reed E. Hundt
Chairman, Federal Communications Commission
1919 M Street, N.W.
Washington, D.C.

Re: CC Docket No. 96-98

Dear Chairman,

Since the signing of the 1996 Telecommunications Act into law on February 8, 1996, your staff and the entire Commission have tirelessly pursued a national policy framework for implementation. For this I must commend you on your leadership in such a difficult task. Time Warner Communications strongly supports a national policy framework to promote telecommunications competition. As you approach the Congressional deadline for implementation of the interconnection policies, a crucial element of the Telecommunications Act of 1996, I am compelled to recap for you three key issues for Time Warner Communications in CC Docket No. 96-98 in light of disturbing reports on the Commission's current positions.

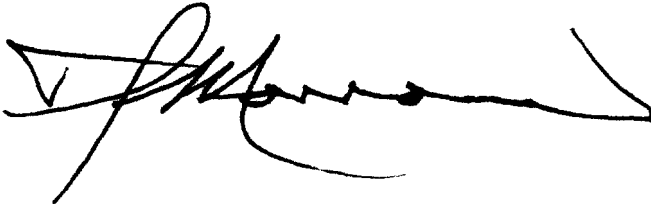
First, it is of utmost importance that the Commission not be unduly influenced by those who would merely *repackage* and *rebrand*, using the facilities of the existing monopoly network. Specifically, I refer to the question of the level of discounts off retail rates a reseller will receive from the incumbent local exchange carrier, and some reports we have been hearing that the Commission is considering adoption of a 22% baseline discount. As we have pointed out repeatedly to both state and federal regulatory bodies, a discount from retail rates has not been cost-justified, and discounts of more than 10 percent will deter investment in *facilities-based* competitive local exchange service. Time Warner has made a substantial commitment to such an investment, but our ability to complete this commitment is directly impacted by this issue. Many states are preliminarily setting the discount for business service near 10 percent, with a somewhat higher discount for residential service. (For example, New York has just established preliminary discounts of 11 and 17 percent, respectively, for NYNEX, and a blended discount of 13.5 percent for Rochester Telephone.) Until full studies can be completed to determine more closely the extent to which costs are avoided when the incumbent LEC moves from a retail-only to a retail/wholesale business structure, discounts that are unduly deep or unsubstantiated will threaten to stop facilities investment in its tracks.

Second, we are deeply concerned that the Commission may be planning to allow the inclusion of embedded, historic costs in the rate for transport and termination. Section 252(d)(2)(A) states that rates must be based on the "additional costs of terminating such calls" (emphasis added). By definition, the term *additional* precludes the inclusion of historic costs, and only considers costs that are *added* to the currently existing cost base. The economic basis called for by the Act for such costs is long-run incremental costs (LRIC). The inclusion of historic costs would be a grave error on the part of the Commission and likely would not be sustained by the courts.

Lastly, we are disturbed by reports that the Commission may be intending to preempt any state decision to adopt *bill and keep* for reciprocal compensation. Such an action clearly will be inconsistent with the "Rules of Construction" for transport and termination charges as described in Section 252(d)(2)(B), which states that the pricing standard for call termination "shall not be construed to preclude...bill-and-keep arrangements." Certain reports purport that the Commission will propose a condition on a state's ability to adopt bill and keep, whereby there must be a specific finding by the state that traffic will be in balance. Clearly this is inconsistent with Section 252(d)(2)(B) which in no way implies that such a condition is required. A finding that traffic be in balance as a pre-condition for bill and keep is a far cry from the *zone of balance* or payment threshold structures that Time Warner has succeeded in negotiating with ILECs, including BellSouth, Southwestern Bell, and Ameritech. Moreover, bill and keep, without any pre-condition of balance, has been found by most states to be in the public interest for at least an interim period. I strongly urge the Commission not to undo what has been accomplished through negotiations or state commission decision and not to overstep its authority by preempting the states in this area.

I hope this clarifies for you the magnitude of these issues to Time Warner Communications. It is imperative that the Commission not cut off the very hope of true competition, that is, competition based on a choice of facilities providers, as intended by Congress in the 1996 Telecommunications Act. Time Warner Communications is clear in its vision for our customers and the network that is necessary to deliver a true choice in local telecommunications services. We hope the Commission is with us in this endeavor.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Quello", with a long horizontal flourish extending to the right.

cc: Commissioner James Quello
Commissioner Susan Ness
Commissioner Rachelle Chong